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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,896	11/18/2003	Jan G. Fager	1504-1034	2815
466	7590	09/14/2006	EXAMINER	
YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			NGUYEN, THU V	
			ART UNIT	PAPER NUMBER
			3661	

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/714,896	Applicant(s) FAGER ET AL.	
	Examiner Thu Nguyen	Art Unit 3661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment filed on July 5, 2006 has been entered. In view of the amended features, restriction with respect to claims 13-22 has been withdrawn. Claims 44-49 have been added. Claims 1-49 are now pending in the application.

The status of claims 13-22 (the "withdrawn" status) should be corrected as "currently amended" or "previously amended" accordingly.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-49 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-44 of U.S. Patent No. 7,061,429 ('429 hereinafter). Although the conflicting claims are not identical, they are not patentably distinct from each other because: '429 discloses a method for determining spatial degrees of freedom of a creature including connecting a creature to a locating member, operating to determine the spatial degree of freedom of the transducer relative to an environment (line 1-4 of claim 1) by receiving

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incident optical signals from three signal sources and recording the relative incident positions of the received signals on a surface of the transducer (lines 6-10 of claim 1), and based on the recorded relative positions of the received signals, calculating and using directions of sight lines between the signal sources and the transducer with respect to the signal sources (claims 8-11 and fig.2), and determining at least two spatial degrees of freedom of the creature (lines 10-16 of claim 1). Although claims 1-44 of '429 disclose a device for determining the position of the creature, claims 1-44 obviously encompasses the method of claims 1-49 because the device disclosed in claims 1-44 performs the same function of the method disclosed in claims 1-49 of the present application. Other claims 2-49 are obviously disclosed in claims 1-44 of '429. The analysis is similarly applied as explained above.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. With respect to claim 1, claim 1, lines 10-13 teaches determining at least two spatial degrees of freedom of the transducer, however, the two steps i) and ii) do not disclose how the two spatial degree of freedom is determined. It is noted that step ii) seems to teach calculating the directions of sight lines but does not disclose how the sight lines are used to determine the spatial degrees of freedom of the transducer.

- b. Other independent claims 2, 13, 16, and 20 are similarly rejected as explained in claim 1 above.
- c. Other claims are rejected as being dependent on the rejected base claims.

Allowable Subject Matter

5. Claims 1-49 would be allowable if the double patenting rejection and the 35 USC 112 second paragraph rejection above is overcome.

6. The following is an examiner's statement of reasons for allowance:

Prior arts of record does not disclose the method for determining the at least two spatial degrees of freedom of a creature, a phenomenon, or an object relative to an environment disclosed in claims 1-2, 13, 16 or 20 in which the creature is connected to a locating member including a transducer, the transducer is operated to determine at least two spatial degrees of freedom of the transducer relative to the environment by recording the relative incident positions of the received signals from at least two signal sources on a surface of the transducer, and based on the recorded relative positions of the received signals, calculating and using directions of sight lines extending between respective signal source and the transducer with respect to the two signal sources; the at least two spatial degrees of freedom of the creature is determined from the at least two spatial degrees of freedom of the transducer, the creature and the locating member is mechanically connected relative to each other within a known limited spatial interval with respect to the at least two spatial degrees of freedom.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the

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issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments


7. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Nguyen whose telephone number is (571) 272-6967. The examiner can normally be reached on T-F (7:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Black can be reached on (571) 272-6956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 9, 2006


THU V. NGUYEN
PRIMARY EXAMINER